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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2011-16*

13 **MADELINE ZIMMERMAN**  
14 **aka Madeline Weisman Zimmerman**  
**aka Madeline Weisman**

**ACCUSATION**

15 **777 Concord Avenue**  
16 **San Jose, CA 95128**  
**Registered Nurse License No. 539153**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs.

24 2. On or about December 9, 1997, the Board of Registered Nursing issued Registered  
25 Nurse License Number 539153 to Madeline Zimmerman ("Respondent"). The Registered Nurse  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on September 30, 2011, unless renewed.

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8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed."

## COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

### 3 STATEMENT OF FACTS

4 11. Patient E.V. was born prematurely on May 10, 2001, at 26 weeks gestation.<sup>1</sup> Upon  
5 discharge from the hospital he had a tracheostomy<sup>2</sup> and a feeding tube through which he received  
6 nutrition and medications.

7 12. On or about September 16, 2002, Maxim HealthCare Services ("Maxim") had  
8 contracted to provide skilled nursing care to E.V. in his home. Respondent was employed with  
9 Maxim and on October 14, 2002, she was the assigned registered nurse to care for E.V.

10 13. Respondent arrived at E.V.'s home at 7:00 a.m. on October 14, 2002. Part of her  
11 initial responsibility was to ensure that all emergency equipment (oxygen, suction equipment,  
12 ambu bag,<sup>3</sup> extra tracheostomy tubes) was working and/or available, if needed.

13 14. At approximately 7:45 a.m., Respondent noted that E.V.'s vital signs were normal.  
14 Shortly thereafter he "sounded like he was congested." Respondent laid him on the floor and  
15 attempted to suction his tracheostomy. She was only able to suction a "few secretions" over a  
16 two minute period, during which time E.V. apparently began seizing and stopped breathing.

17 15. When E.V. went into respiratory arrest, Respondent called for his mother to assist by  
18 getting the oxygen. Respondent then placed the mask attached to the oxygen source over E.V.'s  
19 mouth and nose. It was then that she learned that the oxygen tank was not functioning.  
20 Respondent then instructed the mother to call 911.

21 16. Respondent then placed the ambu bag over E.V.'s mouth and nose. The 911 staff  
22 advised that the oxygen source (be it an ambu bag or external oxygen) must be delivered directly  
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24 <sup>1</sup> A pregnancy is considered to be term when labor commences between 37 to 42 weeks  
25 gestation.

26 <sup>2</sup> A tracheostomy is a surgically created opening in the neck leading directly to the  
27 trachea (breathing tube). It is maintained in a open position with a hollow tube called a  
28 tracheostomy tube.

<sup>3</sup> An Ambu bag is a self inflating bag that is used to ventilate a person in respiratory arrest  
when an external source of oxygen is not available.

1 to the tracheostomy. Respondent then placed the ambu bag over the tracheostomy, at which  
2 point E.V. went into cardiac arrest.

3 17. Respondent began chest compressions. When the emergency staff arrived at the  
4 home they suctioned a mucus plug from E.V.'s tracheostomy. He was transported to the local  
5 hospital and pronounced dead at 8:33 a.m., on October 14, 2002.

6 FIRST CAUSE FOR DISCIPLINE

7 (Gross Negligence/Incompetence – Failure to Clear Airway)

8 18. Respondent is subject to disciplinary action for gross negligence and/or incompetence  
9 pursuant to Code section 2761, subdivision (a)(1) in that she failed to clear and/or used an  
10 inappropriate means to clear E.V.'s tracheostomy, leading to his respiratory arrest.

11 SECOND CAUSE FOR DISCIPLINE

12 (Gross Negligence/Incompetence – Failure to Properly Ventilate)

13 19. Respondent is subject to disciplinary action for gross negligence and/or incompetence  
14 pursuant to Code section 2761, subdivision (a)(1) in that she failed to properly ventilate E.V.,  
15 which then led to his cardiac arrest.

16 THIRD CAUSE FOR DISCIPLINE

17 (Gross Negligence/Incompetence – Failure to Timely Call 911)

18 20. Respondent is subject to disciplinary action for gross negligence and/or incompetence  
19 pursuant to Code section 2761, subdivision (a)(1) in that she failed to call and/or request that 911  
20 be called immediately when E.V. went into respiratory arrest.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Gross Negligence/Incompetence – Failure to Ensure Functioning Emergency Equipment)

23 21. Respondent is subject to disciplinary action for gross negligence and/or incompetence  
24 pursuant to Code section 2761, subdivision (a)(1) in that upon arrival at E.V.'s home she failed to  
25 ensure that the supplemental source of oxygen was functioning and operational in the event of an  
26 emergency.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 539153, issued to Madeline Zimmerman

2. Ordering Madeline Zimmerman to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

7/7/10

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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